

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6655 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MANISH DAMJIBHAI KUMBHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6655 of 2001
MS SUBHADRA G PATEL for Petitioner No. 1
MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/01/2002

ORAL JUDGEMENT

1. The petitioner came to be detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Rajkot City, Rajkot, on July 10, 2001, in exercise of powers under Section 3 of the PASA

Act.

2. The grounds of detention indicate that the petitioner was branded as a bootlegger. For coming to this conclusion, three offences registered against him under the Bombay Prohibition Act as well as statements of two anonymous witnesses were considered. The detaining authority was satisfied that the activities of the detenu are detrimental to public health and public order and that he is immediately required to be detained under the PASA Act in order to immediately prevent him from pursuing his activities. The detaining authority observed that resorting to less drastic remedies is not possible as the petitioner's activities are to be prevented immediately and, therefore, detention under the PASA Act is the only effective remedy that can be resorted to.

3. Following the order, the petitioner came to be detained on July 14, 2001.

4. The petitioner seeks to challenge the order of detention in this petition under Article 226 of the Constitution of India. Various grounds have been raised in the petition. However, learned advocate for the petitioner has pressed only the following grounds:-

(a) It is contended that there is non-application of mind on part of the detaining authority while formulating the grounds of detention. The first registered offence is indicated to be registered at C.R. No.171 of 2001 on 16.10.2001 whereas the order is passed on 10.7.2001 and, therefore, obviously that date is not correct and the number is also not correct. There is, therefore, non-application of mind while passing the order of detention.

(b) The second ground taken by the learned advocate for the petitioner is the delay in considering the representation. It is contended that a representation was made on behalf of the detenu on 19.7.2001, which was addressed to the detaining authority. It was received by the detaining authority on 21.7.2001 and was forwarded to the Government on 24.7.2001. The said representation was received by the Government on 31.7.2001 and was rejected on 3.8.2001, whereas the communication was despatched on 7.8.2001. Therefore, there is delay in forwarding the representation by the

detaining authority and delay in communicating the decision on representation by the Government. The continued detention of the detenu, therefore, would be vitiated.

(c) Learned advocate for the petitioner contended that co-detenu of the present petitioner, namely, Bhanubhai Jairambhai Mali, Harpalsinh Ajasinh Jhala and Dinesh Mansukhlal Pandya are released as their orders of detention are quashed and, therefore also, the petitioner is required to be released on the ground of parity.

(d) As regards the statements of anonymous witnesses, it is contended that there is improper exercise of powers under Section 9(2) of the PASA Act. There is no contemporaneous material to indicate that the authority undertook the exercise expected of it before recording the satisfaction that the fear expressed by the witnesses was genuine and that powers under Section 9(2) are required to be exercised as against the right of the detenu envisaged under Article 22(5) of the Constitution of India.

4.1 The learned advocate for the petitioner urged that on the grounds stated above, the petition may be allowed and the order of detention may be quashed and the petitioner may be directed to be released from detention.

5. The petition is opposed to by learned Assistant Government Pleader Mr. Patel. Meeting with the contentions raised by the learned advocate for the petitioner, Mr. Patel submitted that it is true that there is an error in the grounds of detention in mentioning the number and the date of offence in respect of the first registered offence. The mistake is in mentioning the year. Instead of 2000, 2001 is indicated. Mr. Patel submitted that this is only a typographical error. The petitioner has raised this contention for the first time before this Court, but the detaining authority had, soon after passing the order, by communication dated July 27, 2001, informed the detenu about this error and had informed the correct number also. As such, there is no non-application of mind. He submitted that what was considered by the authority were the relevant papers which all relate to the correct number and the correct offence.

5.1 So far as the second contention regarding delay in forwarding and considering the representation is

concerned, Mr. Patel submitted that, as such, there is no delay. He submitted that the representation was received on 21.7.2001 in the office of the Police Commissionerate, Rajkot. It was forwarded to the Government on 24.7.2001. Between the 21st and the 24th July 2001, the 22nd July, 2001 was a Sunday and the offices were not working. Mr. Patel, therefore, submitted that only one day is taken in forwarding the representation, which cannot be considered as a fatal delay.

5.2. So far as the delay in considering the representation is concerned, it is submitted that the representation was received on 31.7.2001. It was processed immediately and decision was taken on 3.8.2001 rejecting the representation. He submitted that the 4th and the 5th August, 2001 were non-working days - the 4th August, 2001 being a holiday on account of "Raksha Bandhan" and the 5th August, 2001 being a Sunday. The file was then completed on the 6th August, 2001 and communication was sent on the 7th August, 2001. He submitted that, therefore, there is no delay in deciding and communicating the decision on representation.

5.3 Regarding the contention about the release of co-detenu from detention, Mr. Patel submitted that the reference was to co-accused Bhanubhai Jairambhai Mali and not co-detenu as such. If the communication of the detaining authority is seen, it is clear that the said detenu was released from detention much prior to the passing of the present order and even prior to the involvement of the petitioner in registered offences at serial Nos.2 and 3, in the month of June 2001. The considerations and factors considered were, therefore, different in both the cases. This aspect has been asserted by the detaining authority in the affidavit-in-reply and, therefore, the ground that another detenu has been released from detention will not be available to the petitioner. Mr. Patel, therefore, urged that none of the grounds canvassed on behalf of the petitioner may be accepted. He has drawn attention of this Court to Section 6 of the PASA Act and submitted that each of the grounds as mentioned in the grounds of detention is an independent ground for detention and if the petitioner seeks quashing of the order of detention, he would be required to demolish each of the grounds independently. He submitted that, for the reasons stated above, none of the grounds stated can be said to have been successfully demolished by the petitioner and the petition may, therefore, be dismissed.

6. Having regard to rival side contentions, it has to be noted that, in the grounds of detention, in the table indicating offences registered against the detenu, at Sr. No.1, there is a reference to C.R. No.171 of 2001 dated 16.10.2001. This date had not even arrived when the grounds were formulated and order was passed. Apparently, therefore, there seems to be an error. Whether this error can be considered as such to cause prejudice to the detenu will have to be examined. Along with the grounds of detention, the papers relating to the said offence were served on the detenu and they relate to Prohibition C.R. No.171 of 2000 dated 16.10.2000. It is, therefore, clear that the detaining authority has considered the correct papers, but there is an error in mentioning the year in the Crime Register number and the date of offence. As can be seen from the communication produced on record along with the affidavit-in-reply by the detaining authority on 27.7.2001, the authority has rectified its error by communicating to the detenu the correct number. The detenu has not raised this contention earlier except by an amendment in this petition on the previous date of final hearing. The relevant papers were furnished to the detenu along with the grounds of detention and, in the opinion of this Court, no prejudice can be said to have been caused to the detenu by the error that crept in while mentioning the C.R. number and the date in the grounds of detention. It cannot be said that there was no application of mind on part of the detaining authority simply because this typographical error escaped from his attention while signing the order when he has considered the correct papers relating to the offence. Therefore, as such, the effect can at the most be considered to be one that the petitioner was not informed the correct number in the grounds of detention at the time of detention. The detenu was served with copy of documents along with grounds of detention and as such, no prejudice can be said to have been caused to him. It cannot be said that there was non-application of mind. The contention of the petitioner, therefore, that there was non-application of mind on part of the detaining authority while passing the order cannot be accepted. Even if such contention is accepted, then also, it would demolish only the first registered offence amongst the grounds of detention.

6.1 The Second contention is regarding delay in forwarding/considering the representation. A representation was sent on behalf of the detenu by his advocate on 19.7.2001 by Registered Post A.D. A copy of the representation is produced at the time of hearing to

indicate that apart from registered post, the representation was delivered at the office of the Police Commissioner at Rajkot on 21.7.2001. The communication dated 24.7.2001 is also produced to indicate that the detaining authority forwarded the same to the Government for its consideration. It was, therefore, contended that the representation which was received on 21.7.2001 was despatched on 24.7.2001 and that delay in forwarding the representation has affected the right of the detenu of making an effective representation. In counter to this contention, it is contended by learned Assistant Government Pleader that the representation was received on 21.7.2001, 22.7.2001 was a Sunday and, therefore, a non-working day. On 23.7.2001, it was processed and on 24.7.2001, it was forwarded to the Government and communication is sent to the detenu. This aspect is borne out from the copy of the communication produced on record which indicates that it was addressed to the detenu, copy of which was addressed to the learned advocate for the petitioner-detenu on 24.7.2001. In the opinion of this Court, therefore, there does not appear any delay in forwarding the communication to the Government because, as rightly pointed out, it was received on 21.7.2001, 22.7.2001 was a holiday and after processing, it was forwarded to the Government on 24.7.2001. It appears that certain documents were demanded, in respect of which the file was processed and the detenu was intimated, as can be seen from the communication.

6.2 In the petition, the petitioner has come with a case that representation was sent by Registered Post A.D. on 19.7.2001, it is decided by the detaining authority and forwarded to the State Government. The first aspect is not borne out from record. There is nothing to indicate that the detaining authority has decided the representation. It has been forwarded to the Government as stated above.

6.3 The petitioner has come with another contention that the petitioner has not received any reply from the State Government till filing of the petition. However, learned advocate for the petitioner has produced on record a communication addressed to the detenu from the Government intimating that the representation has been rejected by the Government. The said communication is dated the 7th August, 2001. The petition was filed on the 10th August, 2001. As such, the contention in the petition that no communication indicating decision on representation is received from the Government till filing of the petition is, therefore, not correct. The

petitioner has, therefore, not come to Court with correct facts.

6.2 In the opinion of this Court, there is no delay in considering and forwarding the representation either. As stated, the representation was received by the Government on the 1st August, 2001 and was decided on the 3rd August, 2001. The 4th and the 5th August, 2001 were holidays and, therefore, after processing, it was despatched on the 7th August, 2001. No delay can be said to have been caused which would affect the right of the detenu of making an effective representation. The Court is not inclined to accept this contention, more so when the petitioner is not coming out with correct facts.

6.3 So far as the 3rd contention is concerned, it is clearly borne out from the affidavit of the detaining authority that he had independently considered the case of the detenu and other persons, namely, Bhanubhai Jairambhai Mali. The communication from the detaining authority dated 24.7.2001 indicates that Bhanubhai Jairambhai Mali was detained on 19.10.2000 and was released from detention on 10.5.2001. The present order was passed on 10.7.2001. The authority considered two prohibition cases which are subsequent to the date of release from detention of Bhanubhai Jairambhai Mali. It is, therefore, clear that what is stated by the detaining authority that he had independently considered the case of the detenu from the case of Bhanubhai Jairambhai Mali is supported by contemporaneous material and, therefore, the case of the petitioner that because other co-detenu is released from detention, his case also may be considered cannot be accepted, as the case of both the detenu are on different footings and different material is considered.

6.4 The last contention that is raised is regarding improper exercise of powers under Section 9(2) of the PASA Act qua the detenu in respect of anonymous witnesses. The attention of this Court is drawn to the decision in the case of Bai Amina v. State of Gujarat & Ors, 1981 GLR 1186 and Kajalben G. Sindhi v. Commissioner of Police, 2000(2) GLR 1296 to indicate that required exercise is not undertaken by the detaining authority. This Court has taken into consideration the affidavit-in-reply filed by the detaining authority. It appears that while exercising the powers under Section 9(2) of the PASA Act, the exercise for considering the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the

informant were not inquired into. There appears nothing to indicate that the detaining authority examined the necessity for exercise of powers after considering the question whether the apprehension indicated by the witnesses was imaginary or fanciful or genuine nor did it consider whether the apprehension indicated by the witnesses was a mere empty excuse. No contemporaneous material is available, as held in *Ganga v. State of Maharashtra*, AIR 1980 SC 1744, before exercising the powers. This Court, therefore, feels that there is substance in the contention regarding improper exercise of powers under Section 9(2) of the PASA Act and, therefore, reliance could not have been placed on those statements by the detaining authority. The contention, is, therefore, accepted.

7. The upshot of the above discussion is that the detaining authority has exercised powers under Section 9(2) of the PASA Act in respect of two anonymous witnesses which has affected the right of the detenu of making an effective representation and, therefore, the statements of witnesses cannot provide valid ground for exercise of powers under Section 3 of the PASA Act. However, there are other grounds which are stated in the grounds of detention which the petitioner has not been able to demolish. Section 6 of the PASA Act provides that where a person has been detained in pursuance of an order of detention under Section 3, which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each ground and, therefore, such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever. The petitioner, therefore, having failed to demolish the grounds of detention, other than statements of anonymous witnesses, on any of the grounds which would vitiate the order of detention, the order of detention cannot be quashed. The petition, therefore, must fail.

8. The petition is dismissed. Rule is discharged.
No costs.

9. Direct service is permitted.

[A.L. DAVE, J.]

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